Supreme Court, U.S.
FILED
MAR 16 1990
JOSEPH F. SAPNIOL, JR.
CLERK

No. 89-1315

In The Supreme Court
OF THE
United States

OCTOBER TERM, 1989

THE HOSPITAL AUTHORITY OF GWINNETT COUNTY, GEORGIA, Individually and d/b/a GWINNETT AMBULANCE SERVICES,
Petitioner,

v.

R. STANFORD JONES, Administrator of the Estate of WILLIAM HAROLD O'KELLEY, Deceased,
Respondent.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF GEORGIA

SUPPLEMENTAL BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

* HAROLD N. HILL, JR.
E. CLAYTON SCOFIELD III
HURT, RICHARDSON, GARNER, TODD & CADENHEAD
1400 Peachtree Place Tower
999 Peachtree Street, N.E.
Atlanta, Georgia 30309-3999
(404) 870-6000

Attorneys for Petitioner

* Counsel of Record

Of Counsel:

MEADE BURNS
MILTON B. SATCHER
LONG, WEINBERG, ANSLEY & WHEELER
999 Peachtree Street, N.E.
Suite 2700
Atlanta, Georgia 30309
(404) 876-2700

BEST AVAILABLE COPY

No. 89-1315

In The Supreme Court
OF THE
United States

OCTOBER TERM, 1989

THE HOSPITAL AUTHORITY OF
GWINNETT COUNTY, GEORGIA,
Individually and d/b/a
GWINNETT AMBULANCE SERVICES,

Petitioner,

v.

R. STANFORD JONES, Administrator of the Estate
of WILLIAM HAROLD O'KELLEY, Deceased,

Respondent.

ON WRIT OF CERTIORARI
TO THE SUPREME COURT OF GEORGIA

SUPPLEMENTAL BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

Since the filing of the Petition for Writ of Certiorari in this case on February 16, 1990, it has come to our attention that on February 7, 1990, a petition for writ of certiorari was filed in *Pacific Mutual Life Insurance Company v. Haslip, et al.*, No. 89-1279.

If the Court is inclined to grant the petition in *Pacific Mutual*, petitioner herein urges the Court to consider joining the *Pacific Mutual* petition with the petition in the instant case. Although some of the issues raised in each

petition are similar, there are strikingly different issues raised in each case, and granting both petitions will bring before this Court all of the significant due process and equal protection issues involving punitive damages for consideration at one time.

The different issues being raised in these two petitions include the following:

(1) *Equal Protection.*

The equal protection issues in the two cases are complementary and raise different aspects of equal protection analysis. The one equal protection issue raised in *Pacific Mutual* (question 5) is not specifically included in the equal protection issue raised in the instant petition (question 2, and p. 23), while the equal protection issues in the instant petition are more broadly based. All issues should be resolved by this Court.

(2) *Punitive Damages as Criminal in Nature.*

The hypothesis of the *Pacific Mutual* petition apparently is that punitive damages are criminal in nature. *See* question 4 and accompanying text at 22-24. Without conceding that punitive damages are not criminal in nature, the hypothesis of the instant petition and our brief on the merits is, and will be, that punitive damages are, at minimum, quasi-criminal, and therefore entitled to at least a level of scrutiny between that afforded in civil cases and criminal cases. *See* Petition in this case at 16 par. (f), 18, 22.

(3) *Respondeat Superior.*

The *Pacific Mutual* case involves the respondeat superior theory of liability for punitive damages (question 2), whereas this case does not. The Court could dispose of the *Pacific Mutual* case on the basis of non-liability under the respondeat superior theory, and thus not reach the other significant issues raised in that case, and in this case.

(4) *Excessiveness.*

The *Pacific Mutual* case involves the question (No. 3) of whether the punitive damages awarded against it were grossly excessive in violation of its right to due process. While that issue is not specifically raised in this case, the issue of whether the Georgia statute is unconstitutional because it fails to set forth any clear, constitutionally acceptable standards for juries to apply in determining the amount of such damages is raised in this case. *See* Petition at 16, 17, 19.

There are other important differences between the two cases upon which the Court may wish to focus, including the following:

> The *Pacific Mutual* case apparently involves an intentional tort, fraud, arising out of a contractual relationship. The instant case involves a pure tort, negligence ("an entire want of care which would raise a presumption of conscious indifference to the consequences"). Petitioner submits that this is a significant difference.
>
> In addition, the *Pacific Mutual* case apparently challenges Alabama common law. The instant case involves a vague Georgia statutory enactment, O.C.G.A. § 51-12-5, which was a codification of Georgia's common law.

There is at least one other pending petition for writ of certiorari which involves punitive damages, *Reserve Life Insurance Company v. Eichenseer*, No. 89-1303, filed February 13, 1990. That petition makes excellent arguments as to why the Court should grant certiorari in these punitive damages cases. *Reserve Life*, however, presents a factual and procedural background distinct from the instant case. In *Reserve Life*, the Fifth Circuit Court of Appeals assumed "arguendo that the Due Process Clause constrains the imposition of punitive damages in civil cases brought by private parties" (No. 89-1303 at 22a). Furthermore, the District Court explained in its order

imposing an award of $500,000 in punitive damages why such damages were being assessed, as well as how the amount had been calculated (No. 89-1303 at 23a-26b).

WHEREFORE, petitioner moves and urges the Court to grant its petition for writ of certiorari, alone, or joined with Pacific Mutual's petition in Case No. 89-1279, or joined with that case and Reserve Life's petition in Case No. 89-1303.

March 19, 1990

Respectfully submitted,
*By: /s/ HAROLD N. HILL, JR.
Harold N. Hill, Jr.

By: /s/ E. CLAYTON SCOFIELD III
E. Clayton Scofield III

Attorneys for Petitioner
* Counsel of Record

HURT, RICHARDSON, GARNER,
TODD & CADENHEAD
1400 Peachtree Place Tower
999 Peachtree Street, N.E.
Atlanta, Georgia 30309-3999
(404) 870-6000

Of Counsel:

MEADE BURNS
MILTON B. SATCHER
LONG, WEINBERG, ANSLEY & WHEELER
999 Peachtree Street, N.E.
Suite 2700
Atlanta, Georgia 30309
(404) 876-2700